

120 FERC ¶ 61,196  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Town of Norwood, Massachusetts

Docket Nos. EL03-37-006  
EL03-37-007

v.

National Grid USA,  
New England Electric System,  
Massachusetts Electric Company,  
and Narragansett Electric Light Company

ORDER DENYING MOTION FOR CLARIFICATION AND REQUEST FOR  
REHEARING, AND REJECTING COMPLIANCE FILING

(Issued August 30, 2007)

1. On June 14, 2007, New England Power Company (New England Power)<sup>1</sup> filed a motion for clarification and an alternative request for rehearing of the Commission's May 17, 2007 order on remand in this proceeding.<sup>2</sup> In a separate filing, also on June 14, 2007, New England Power filed a compliance filing pursuant to the May 2007 Order. In the May 2007 Order, the Commission held that the Town of Norwood, Massachusetts (Norwood) must pay interest on late contract termination charge (CTC) payments at a prime rate-based interest rate, as calculated in section 35.19a of the Commission's regulations (Revised Interest Rate).<sup>3</sup> In its motion, New England Power requests that the

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<sup>1</sup> New England Power has been renamed National Grid USA Service Company, Inc. following the merger of its corporate parent. However, here, as in the previous orders, the company is referred to as New England Power.

<sup>2</sup> *Town of Norwood, Massachusetts v. National Grid USA*, 119 FERC ¶ 61,148 (2007) (May 2007 Order).

<sup>3</sup> 18 C.F.R. § 35.19a (2007).

Commission clarify that the Revised Interest Rate is effective June 30, 2006. In the alternative, New England Power requests rehearing. For the reasons discussed below, we deny the motion for clarification and alternative request for rehearing, reject New England Power's compliance filing, and require a new compliance filing consistent with this order.

## **I. Background**

2. Previous orders contain detailed descriptions of the background and history of the parties' contractual relationship, the CTC payments, and the dispute over the CTC payments.<sup>4</sup>

3. In brief, New England Power began providing wholesale full requirements electric service to Norwood in 1983. In 1989, the parties amended the contract to allow Norwood to extend the earliest date for giving notice of its intent to terminate the contract. Although Norwood extended the term of the contract through October 2008, it notified New England Power on March 4, 1998 that it intended to terminate the contract early—effective April 1, 1998—so that it could obtain electric power from another supplier.

4. Shortly after receiving the notice of termination, New England Power filed an amendment to its tariff to allow customers to buy out their service agreements if they pay CTC payments. The Commission accepted the amendment.<sup>5</sup> Since then, the parties have engaged in extensive litigation concerning the CTC payments.

5. On February 22, 2006, in the *First Rehearing Order*, the Commission determined that late CTC payments by Norwood were subject to section J of New England Power's tariff, which established interest on late payments at an effective rate of 18 percent per year (one and one-half percent per month).<sup>6</sup> On June 30, 2006, in the *Second Rehearing Order*, the Commission denied Norwood's request for rehearing. Norwood subsequently appealed the Commission's decision to the United States Court of Appeals for the First Circuit. As relevant here, Norwood argued that the 18 percent interest rate in section J

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<sup>4</sup> See, e.g., *Town of Norwood, Massachusetts v. National Grid USA*, 112 FERC ¶ 61,099 (2005) (*Order on Initial Decision*), *order on reh'g and compliance filing*, 114 FERC ¶ 61,187 (2006) (*First Rehearing Order*), *reh'g denied*, 115 FERC ¶ 61,396 (2006) (*Second Rehearing Order*), *remanded in relevant part sub. nom. Town of Norwood v. FERC*, 476 F.3d 18 (1<sup>st</sup> Cir. 2007) (*Remand Order*).

<sup>5</sup> *New England Power Co.*, 83 FERC ¶ 61,174, *order denying reh'g*, 84 FERC ¶ 61,175 (1998), *aff'd sub nom. Town of Norwood v. FERC*, 202 F.3d 392 (1<sup>st</sup> Cir. 2000).

<sup>6</sup> *First Rehearing Order*, 114 FERC ¶ 61,187 at P 43-51.

was unjust, unreasonable, and inconsistent with Commission precedent, specifically, *Connecticut Light & Power Co.*, where the Commission rejected a proposed 18 percent interest rate on late payments.<sup>7</sup>

6. The Court of Appeals affirmed the Commission's holding that interest on late payments must be based on at least the prime rate, but remanded to the Commission the issue of whether more than the prime rate is due.<sup>8</sup> In the May 2007 Order, the Commission held, consistent with *Connecticut Light & Power Co.*, that in this case an 18 percent penalty rate is unjust and unreasonable. The Commission further concluded that, in the absence of a persuasive showing justifying a different interest rate, it is appropriate to apply the Revised Interest Rate. Accordingly, the Commission directed New England Power to submit a report and revised tariff sheets consistent with this conclusion.<sup>9</sup>

## **II. New England Power's Motion for Clarification and Alternative Request for Rehearing**

### **A. Motion for Clarification**

7. New England Power does not challenge the Commission's holding that Norwood must pay interest on late CTC payments at the Revised Interest Rate.<sup>10</sup> Instead, New England Power requests that the Commission clarify that the Revised Interest Rate is effective prospectively from June 30, 2006, and therefore that Norwood must pay interest at the 18 percent section J rate on all late CTC payments due prior to June 30, 2006. New England Power argues that this clarification is necessary because the May 2007 Order did not explicitly address the effective date of the Revised Interest Rate, and because the Commission does not have authority under section 206 of the Federal Power Act (FPA)<sup>11</sup> to order an earlier effective date than June 30, 2006.<sup>12</sup>

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<sup>7</sup> 59 FPC 811, 821 (1977).

<sup>8</sup> *Remand Order*, 476 F.3d at 29.

<sup>9</sup> May 2007 Order, 119 FERC ¶ 61,148 at P 7.

<sup>10</sup> Motion for Clarification and Request for Rehearing of New England Power at 2, 9 (Motion).

<sup>11</sup> 16 U.S.C. § 824e (2000).

<sup>12</sup> Motion at 10-11.

8. New England Power states that section 206(a)<sup>13</sup> generally empowers the Commission to order only prospective relief from the date it determines that a rate is unjust and unreasonable, but that courts and the Commission have held that, when an appellate court has reversed a Commission order upholding the existing rate, the Commission may make the relief effective as of the date of the overturned order.<sup>14</sup> New England Power contends that the June 30, 2006 *Second Rehearing Order* “was the first and only order” in which the Commission addressed whether the interest rate in section J was just and reasonable,<sup>15</sup> and because the Court of Appeals “identified a potential legal error” in the June 30, 2006 *Second Rehearing Order*, the earliest date the Commission may make the Revised Interest Rate effective is June 30, 2006.<sup>16</sup>

9. New England Power further argues that the Commission has no occasion here to exercise its authority to grant retroactive relief under section 206(b).<sup>17</sup> New England Power states that the Commission’s authority under section 206(b) is limited in time to the fifteen month period following an established refund effective date, and is limited in type to ordering refunds of amounts paid during that period in excess of the rate later determined to be just and reasonable. New England Power maintains that, even if the Commission gave effect to the February 21, 2003 refund effective date established in this proceeding,<sup>18</sup> the Commission cannot order refunds of excessive interest paid because Norwood made no late payments, and thus paid no interest, during the fifteen month period between February 21, 2003 and May 21, 2004.

10. New England Power also argues that an effective date for the Revised Interest Rate earlier than June 30, 2006 would violate the filed rate doctrine and the rule against retroactive ratemaking. New England Power explains that under the filed rate doctrine it may only charge rates properly filed with the Commission, and under the rule against

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<sup>13</sup> 16 U.S.C. § 824e(a) (2000).

<sup>14</sup> Motion at 11-12.

<sup>15</sup> *Id.* at 13.

<sup>16</sup> *Id.* at 12.

<sup>17</sup> 16 U.S.C. § 824e(b) (2000).

<sup>18</sup> The Commission set the February 21, 2003 refund effective date in *Town of Norwood v. National Grid USA*, 104 FERC ¶ 61,030 (2003). New England Power argues that the issue of whether the interest rate in section J was just and reasonable did not arise until much later in the proceeding and, as a consequence, the February 21, 2003 refund effective date does not apply to this issue.

retroactive ratemaking the Commission may not adjust current rates to make up for a utility's over or under collection in prior periods. Here, New England Power asserts that the filed tariff specified interest on late payments at 1.5 percent per month until the May 2007 Order, and that the rule against retroactive ratemaking prohibits the Commission from not giving effect to the 1.5 percent monthly rate in the filed tariff for all late CTC payments due prior to June 30, 2006.

**B. Request for Rehearing**

11. New England Power argues that, if the Commission denies its motion for clarification and holds that the May 2007 Order intended the Revised Interest Rate to be effective before June 30, 2006, then the Commission should grant rehearing for the same reasons set forth in the motion for clarification.

**C. Discussion**

**1. Procedural Matters**

12. Norwood filed an answer to New England Power's motion for clarification and request for rehearing. New England Power filed an answer to Norwood's answer and Norwood, in turn, filed an answer to New England Power's answer. Pursuant to Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, answers to requests for rehearing are prohibited.<sup>19</sup> Accordingly, as New England Power's motion for clarification and request for rehearing is essentially just a request for rehearing, we will reject the answers.

**2. Substantive Matters**

13. We deny New England Power's motion for clarification and request for rehearing.

14. In the May 2007 Order, the Commission expressly intended the Revised Interest Rate to be effective from the time bills were first rendered. The Commission thus stated that "consistent with the Remand Order, Norwood owes New England Power the CTCs plus interest calculated from the time the bill was first rendered."<sup>20</sup>

15. In this regard, the Court of Appeals has already decided the issue of the Revised Interest Rate's effective date. In the *Remand Order*, the Court of Appeals remanded to the Commission the issue of the appropriate interest rate to be applied to Norwood's late

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<sup>19</sup> 18 C.F.R. § 385.713(d)(1) (2007).

<sup>20</sup> May 2007 Order, 119 FERC ¶ 61,148 at P 7.

CTC payments. The Court of Appeals rejected the argument that Norwood should have to pay that interest rate only on late CTC payments due after the Commission's February 22, 2006 *First Rehearing Order*.<sup>21</sup> The court held that whatever interest rate the Commission specified on remand must apply from the time the bill was first rendered:

[S]ection J makes it quite clear that, when a customer disputes an amount billed by a carrier, the carrier is entitled to prescribed interest that accrues "from . . . the rendering of said bill" on "the amount finally determined to be due and payable." Norwood has challenged the amount of interest prescribed; *but whatever the figure FERC finds justified, the tariff provides that Norwood owes that amount from the time the bill was rendered*.<sup>22</sup>

16. In the May 2007 Order, the Commission held that Norwood must pay interest at the Revised Interest Rate. Consistent with the Court of Appeals' decision, the Revised Interest Rate is effective from the time the bill was first rendered. Accordingly, we deny the motion for clarification and alternative request for rehearing.

### **III. New England Power's Compliance Filing**

17. New England Power has submitted a compliance filing pursuant to the May 2007 Order. In its compliance filing, New England Power calculates late CTC payments before June 30, 2006 using the 18 percent interest rate, consistent with its position in its motion for clarification and alternative request for rehearing.

#### **A. Notice of Filing and Responsive Pleadings**

18. Notice of New England Power's compliance filing was published in the *Federal Register*,<sup>23</sup> with interventions and comments due on or before July 5, 2007. On June 29, 2007, Norwood filed comments protesting New England Power's compliance filing. New England Power filed an answer to Norwood's protest and Norwood, in turn, filed an answer to New England Power's answer.

19. In its protest, Norwood argues that New England Power's compliance filing should be rejected because it does not calculate late CTC payments with the Revised Interest Rate until after June 30, 2006. Norwood states that, in order to comply with the

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<sup>21</sup> *Remand Order*, 476 F.3d at 29.

<sup>22</sup> *Id.* (emphasis added).

<sup>23</sup> 72 Fed. Reg. 35,453 (2007).

Commission's directive in the May 2007 Order, New England Power must apply the Revised Interest Rate from the time the bill was rendered.

**B. Discussion**

**1. Procedural Matters**

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,<sup>24</sup> prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers and will, therefore, reject them.

**2. Substantive Matters**

21. We reject New England Power's compliance filing. As we have explained, consistent with the Court of Appeals' ruling, the May 2007 Order directed New England Power to calculate interest on late CTC payments at the Revised Interest Rate from the time the bill was first rendered. Accordingly, we direct New England Power to submit a report and revised tariff sheets reflecting the interest rate contained in 18 C.F.R. § 35.19a (2007), as of the time the bill was first rendered, as described herein within 30 days of the date of this order.

**The Commission orders:**

(A) New England Power's motion for clarification and alternative request for rehearing is hereby denied.

(B) New England Power's compliance filing is hereby rejected.

(C) Within 30 days of the date of this order, New England Power is directed to file a report with the Commission reflecting the amount of the CTCs owed, plus the applicable interest rate(s) and interest amount(s), calculated pursuant to section 35.19a of the Commission's regulations, from the time the bill was first rendered.

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<sup>24</sup> 18 C.F.R. § 385.213(a)(2) (2007).

(D) New England Power is hereby directed to file, within 30 days of the date of this order, revised tariff sheets consistent with the discussion in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Acting Deputy Secretary.